

# UNIVERSITY OF JAMMU



## **TOPIC- “SOCIO-LEGAL DEVELOPMENTS IN INDIA: SOME ISSUES AND CHALLENGES” SUB TOPIC- “MERCY PETITION IN INDIA”**

**PRESENTED BY  
THE LAW SCHOOL  
UNIVERSITY OF JAMMU  
JAMMU (J&K)**

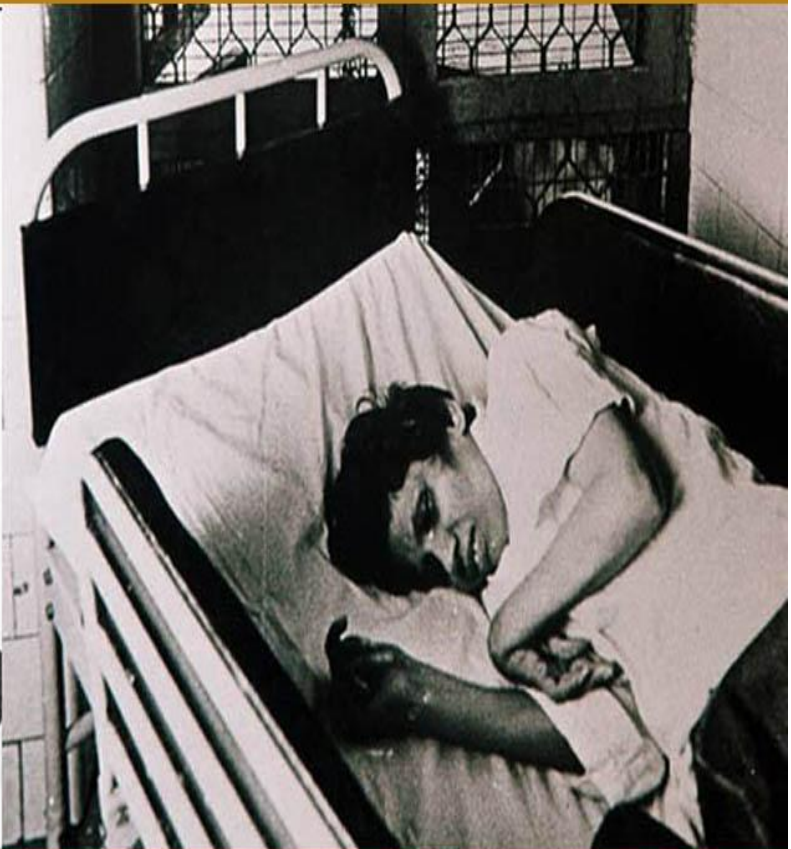
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**“MARTE HAIN AARZOO MEIN MARNE KI MAUT AATI HAI PAR  
NAHIN AATI”- MIRZA GHALIB**

## **Aruna Shanbaug**



**37 years ago...**



**few years ago...**

## **MEANING OF MERCY KILLING OR EUTHANASIA**

The word 'Euthanasia' is derived from the Greek words 'eu' and 'thanotos' which literally mean "good death". It is otherwise described as **mercy killing**.

The death of a terminally ill patient is accelerated through **active or passive** means in order to relieve such patient of pain or suffering. It appears that the word was used in the **17th Century** by **Francis Bacon** to refer to an easy, painless and happy death for which it was the physician's duty and responsibility to alleviate the physical suffering of the body of the patient.

## **KINDS OF EUTHANASIA:**

### **Passive And Active Euthanasia**

We are here concerned with '**Passive Euthanasia**' as distinct from '**Active Euthanasia**'. The distinction has been highlighted in the decision of the Supreme Court of India in –

**Aruna Ramachandra Shanbaug vs. Union of India.**<sup>1</sup>

**Active euthanasia** involves taking specific steps such as injecting the patient with a lethal substance e.g. Sodium Pentothal which causes the person to go in deep sleep in a few seconds and the person dies painlessly in sleep, thus it amounts to killing a person by a positive act in order to end suffering of a person in a state of terminal illness.

**In India active euthanasia is illegal and a crime under section 302 or at least section 304 IPC. Physician assisted suicide is a crime under section 306 IPC (abetment to suicide).**

**Passive euthanasia**, is known as 'negative euthanasia', however, stands on a different footing. It involves withholding of medical treatment or withholding life support system for continuance of life e.g., withholding of antibiotic where without doing it, the patient is likely to die or removing the heart–lung machine from a patient in coma.

**Passive Euthanasia is legal even without legislation provided certain conditions and safeguards are maintained courtesy in Aruna's case.** The core point of distinction between

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<sup>1</sup> (2011) 4 SCC 454.

active and passive euthanasia as noted by Supreme Court is that in active euthanasia, something is done to end the patient's life while in passive euthanasia, something is not done that would have preserved the patient's life.

**To quote the words of learned Judge in Aruna's case, in passive euthanasia,**

**"the doctors are not actively killing anyone; they are simply not saving him".**

**The Court graphically said "while we usually applaud someone who saves another person's life, we do not normally condemn someone for failing to do so".**

The Supreme Court pointed out that according to the proponents of Euthanasia, while we can debate whether active euthanasia should be legal, there cannot be any doubt about passive euthanasia as "you cannot prosecute someone for failing to save a life".

The Supreme Court then repelled the view that the distinction is valid and in doing so, relied on the landmark English decision of **House of Lords in Airedale**<sup>2</sup>

### **The Ruling**

*The judges debated the moral and ethical issues raised by the case but in the end they agreed that given the circumstances: "it is perfectly reasonable for the responsible doctors to conclude that there is no affirmative benefit to Anthony Bland in continuing the invasive medical procedures necessary to sustain his life. Having so concluded, they are neither entitled nor under a duty to continue such medical care. Therefore they will not be guilty of murder if they discontinue such care." Treatment was stopped and Tony Bland died on March 3rd 1993.*

**Passive euthanasia** is further classified as **Voluntary And Non-Voluntary**.

**Voluntary Euthanasia** is where the consent is taken from the patient.

In **Non-Voluntary Euthanasia**, the consent is unavailable on account of the condition of the patient for example, when he is in coma.

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<sup>2</sup> (1993) 1 All ER 821.

**The Supreme Court** then observed: “while there is no legal difficulty in the case of the former, the latter poses several problems, which we shall address”. The Supreme Court was concerned with a case of non-voluntary passive euthanasia because the patient was in coma.

The Law Commission of India clarified that where a competent patient takes an ‘informed decision’ to allow nature to have its course, the patient is, under common law, not guilty of **attempt to commit suicide (u/s 309 IPC)** nor is the **doctor who omits to give treatment, guilty of abetting suicide (u/s 306 IPC) or of culpable homicide (u/s 299 read with Section 304 of IPC).**

### **ARUNA RAMACHANDRA SHANBAUG V. UNION OF INDIA**

**Aruna Ramachandra Shanbaug** was a staff Nurse working in King Edward Memorial Hospital, Parel, Mumbai. On the evening of 27<sup>th</sup> November, 1973 she was attacked by a sweeper in the hospital who wrapped a dog chain around her neck and yanked her back with it. He tried to rape her but finding that she was menstruating, he sodomized her. To immobilize her during this act he twisted the chain around her neck. The next day on 28<sup>th</sup> November, 1973 at 7:45 a.m. a cleaner found her lying on the floor with blood all over in an unconscious condition. It is alleged that due to strangulation by the dog chain the supply of oxygen to the brain stopped and the brain got damaged. It is alleged that the Neurologist in the Hospital found that she had plantars' extensor, which indicates damage to the cortex or some other part of the brain. She also had brain stem contusion injury with associated cervical cord injury. Aruna lives in her own world for last 37 years. She is lying in a bed in a single room for 33 years. She has not been able to stand or walk, nor has attempted to do that because she is fragile and would break her bones if she falls. Her extremities and fingers have developed contractures and subsequent to non-use; there is wasting of her body muscles.

Since there was some variance in the allegation in the writ petition and the counter affidavit of Dr. Pazare, order dated 24 January, 2011 appointed a team of three very distinguished doctors of Mumbai to examine Aruna Shanbaug thoroughly and submit a report about her physical and mental condition.

According to them: She meets most of the criteria for being in a **Permanent Vegetative State** (PVS). PVS is defined as a clinical condition of unawareness of self and environment in which

the patient breathes spontaneously, has a stable circulation and shows cycles of eye closure and opening which may stimulate sleep and waking. While she has evidence of intact auditory, visual, somatic and motor primary neural pathways, no definitive evidence for awareness of auditory, visual, somatic and motor stimuli was observed during medical examinations.

## **MEDICAL TERMINOLOGY**

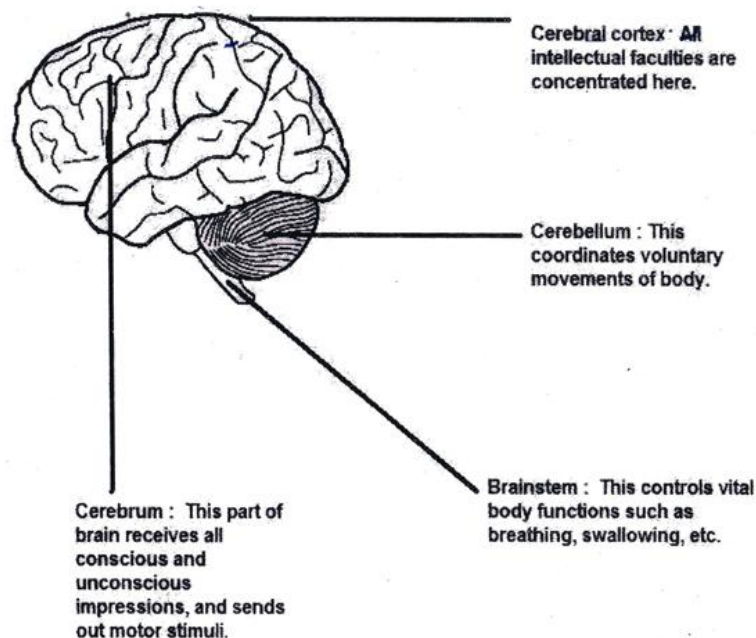
### **Brain death**

A state of prolonged irreversible cessation of all brain activity, including lower brain stem function with the complete absence of voluntary movements, responses to stimuli, brain stem reflexes, and spontaneous respirations.

**Explanation:** This is the most severe form of brain damage. The patient is unconscious, completely unresponsive, has no reflex activity from centers in the brain, and has no breathing efforts on his own.

However the heart is beating. This patient can only be maintained alive by advanced life support (breathing machine or ventilator, drugs to maintain blood pressure, etc). These patients can be legally declared dead ('brain dead') to allow their organs to be taken for donation.

Aruna Shanbaug is clearly not brain dead.



### **Vegetative State (VS)**

The complete absence of behavioral evidence for self or environmental awareness. There is preserved capacity for spontaneous or stimulus-induced arousal, evidenced by sleep-wake cycles. .i.e. patients are awake, but have no awareness.

Explanation: Patients appear awake. They have normal heart beat and breathing, and do not require advanced life support to preserve life. They cannot produce a purposeful, coordinated, voluntary response in a sustained manner, although they may have primitive reflexive responses to light, sound, touch or pain. They cannot understand, communicate, speak, or have emotions. They are unaware of self and environment and have no interaction with others. They cannot voluntarily control passing of urine or stools. They sleep and awaken. As the centers in the brain controlling the heart and breathing are intact, there is no threat to life, and patients can survive for many years with expert nursing care.

The following behaviors may be seen in the vegetative state :

*Sleep-wake cycles with eyes closed, then open Patient breathes on her own*

*Spontaneous blinking and roving eye movements Produce sounds but no words Brief, unsustained visual pursuit (following an object with her eyes) Grimacing to pain, changing facial expressions Yawning; chewing jaw movements Swallowing of her own spit Non-purposeful limb movements; arching of back Reflex withdrawal from painful stimuli Brief movements of head or eyes toward sound or movement without apparent localization or fixation Startles with a loud sound Almost all of these features consistent with the diagnosis of permanent vegetative state were present during the medical examination of **Aruna Shanbaug**.*

### **Minimally Conscious State**

Some patients with severe alteration in consciousness have neurological findings that do not meet criteria for VS. These patients demonstrate some behavioral evidence of conscious awareness but remain unable to reproduce this behavior consistently. This condition is referred to

here as the minimally conscious state (MCS). MCS is distinguished from VS by the partial preservation of conscious awareness.

To make the diagnosis of MCS, limited but clearly discernible evidence of self or environmental awareness must be demonstrated on a reproducible or sustained basis by one or more of the following behaviors:

**Following simple commands:**

Gestural or verbal yes/no responses (regardless of accuracy). Intelligible sounds

Purposeful behavior, including movements or emotional behaviors (smiling, crying) that occur in relation to relevant environmental stimuli and are not due to reflexive activity. Some examples of qualifying purposeful behavior include: - appropriate smiling or crying in response to the linguistic or visual content of emotional but not to neutral topics or stimuli - vocalizations or gestures that occur in direct response to the linguistic content of questions - reaching for objects that demonstrates a clear relationship between object location and direction of reach- touching or holding objects in a manner that accommodates the size and shape of the object -pursuit eye movement or sustained fixation that occurs in direct response to moving or salient stimuli. None of the above behaviors suggestive of a Minimally Conscious State were observed during the examination of Aruna Shanbaug.

In **Vikram Deo Singh Tomar vs. State of Bihar**<sup>3</sup>

We live in an age when this Court has demonstrated, while interpreting Article 21 of the Constitution, that every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is the fundamental right of every Indian citizen.

He has also relied on the decision of this Court in **P. Rathinam vs. Union of India and another**<sup>4</sup> in which a two-Judge bench of the Court quoted with approval a passage from an article by **Dr. M. Indira and Dr. Alka Dhal in which it was mentioned :**

**Life is not mere living but living in health. Health is not the absence of illness but a glowing vitality.**

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<sup>3</sup> (1988) SCC 734.

<sup>4</sup> (1994) SCC 395.



The decision in Rathinam's case was, however, overruled by a Constitution Bench decision of the Court in Gian Kaur vs. State of Punjab<sup>5</sup> and in Vikram Deo Singh Tomar vs. State of Bihar where it was observed by this Court while interpreting Article 21 of the Constitution, that every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is the fundamental right of every Indian citizen.

Protagonism of euthanasia on the view that existence in Persistent Vegetative State (PVS) is not a benefit to the patient of a terminal illness being unrelated to the principle of 'sanctity of life' or the right to live with dignity is of no assistance to determine the scope of Article 21 for deciding whether the guarantee of Right To Life therein includes the Right To Die. The right to life including the right to live with human dignity would mean the existence of such a right upto the end of natural life. This also includes the right to a dignified life upto the point of death including a dignified procedure of death. In other words, this may include the right of a dying man to also die with dignity when his life is ebbing out. But the right to die with dignity at the end of life is not to be confused or equated with the right to die an unnatural death curtailing the natural span of life.

## EUTHANASIA AND CODE OF MEDICAL ETHIC

Two cardinal principles of medical ethics are stated to be patient autonomy and beneficence .

1. Autonomy means the right to self-determination, where the informed patient has a right to choose the manner of his treatment. To be autonomous, the patient should be competent to make decision and choices. In the event that he is incompetent to make choices, his wishes expressed in advance in the form of a living will, or the wishes of surrogates acting on his behalf are to be respected. The surrogate is expected to represent what the patient may have decided had he/she been competent, or to act in the patient's best interest.

2. Beneficence is acting in what is in the patient's best interest. Acting in the patient's best interest means following a course of action that is best for the patient, and is not influenced by personal convictions, motives or other considerations.....”

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<sup>5</sup> (1996) 2 SCC 648.

***Hippocratic oath–and International Code of medical ethics** pose ethical contradiction for doctors. According to the oath and the ethics, the doctor is to relieve the pain of his patient on one hand and protect and prolong his life on the other.*

### **EUTHANASIA AND THE LAW**

In India, like almost in all other countries of the world, euthanasia has no legal status. Supreme court of India on 31-3-1996 expressed that euthanasia (mercy killing) is a matter of policy which falls within the domain of legislature.

On the other hand, as the law stands, the practice of euthanasia is clear act of offence, either suicide (309IPC)) or assistance to commit suicide (306 IPC).

Section 87 of IPC lays down that consent cannot be pleaded as defense in a case where the consent is given to cause death or grievous hurt. With regard to death, the restriction is absolute and unconditional though consent may have the effect of reducing the gravity of the offence.

In India, suicide per se is not a crime but attempted suicide is exception 5 of section 300 IPC protects a person who causes the death of another above the age of 18 with his /her consent. However this section has a limited scope. It only reduces the gravity of the offence and the person charged is made liable for culpable homicide not amounting to murder (304IPC)

### **LAW COMMISSION’S 196TH REPORT**

The Law Commission of India, in its 196th Report, had in its opening remarks clarified in unmistakable terms that the Commission was not dealing with “euthanasia” or “assisted suicide” which are unlawful but the Commission was dealing with a different matter, i.e.,

***“withholding life-support measures to patients terminally ill and universally in all countries, such withdrawal is treated as lawful”.***

Time and again, it was pointed out by the Commission that withdrawal of life support to patients is very much different from euthanasia and assisted suicide, a distinction which has been sharply focused in **Aruna’s case** as well. *Aruna’s case* preferred to use the compendious expression – “passive euthanasia”.

**The 17<sup>th</sup> Law Commission of India** The 17th Law Commission of India took up the subject for consideration at the instance of Indian Society of Critical Care Medicine, Mumbai which held a Seminar attended by medical and legal experts. It was inaugurated by the then Union Law Minister. The Law Commission studied a vast literature on the subject before the preparation of report.

## **RIGHT TO DIE AND INDIAN CONSTITUTION**

**Article 21 of the Constitution of India** talks about **“Right to life and Personal Liberty”** except according to procedure established by law. By the term ‘Life’, “something more is meant than mere animal existence”. “The inhibition against its deprivation extends to all those limits and faculties by which life is enjoyed”, as observed by **Justice Field, of the Supreme Court of US** in **Munn v. Illino**<sup>6</sup> the observation has been quoted by the Constitution Bench of the Supreme Court in **Kharak Singh v. State of Uttar Pradesh.**<sup>7</sup> The expression *‘procedure established by law’*, has been interpreted by the Supreme Court in **Maneka Gandhi’s case**<sup>8</sup> to mean **right and just and fair procedure** and not any sort of procedure. The scope of Article 21 which was initially confined to arbitrary deprivation of life and personal liberty, was extended to positive rights to enable an individual to live the life with dignity.

## **EUTHANASIA- PRESENT POSITION INDIA**

Euthanasia is illegal in India, though it has many silent supporters in medial corridors. The movement for a good death recently got a boost with the law commission in June, 2008 deciding to recommend to the government to allow terminally ill persons the right to end their lives.

In a democracy the individual is supreme.

Hippocratic Oath which preserves the sanctity of life as well as the Indian values of family tradition don’t give permission of euthanasia. It is deeply emotional feeling which prevails in Indian Society.

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<sup>6</sup> (1877) 94 US 113 at 143.

<sup>7</sup> (1963) AIR 1295.

<sup>8</sup> AIR 1978 SC 597.

## **DOCTRINE OF PARENS PATRIAE**

The doctrine of Parens Patriae (father of the country) had originated in British Law as early as the 13<sup>th</sup> century. It implies that the king is the father of the country and is under obligation to look after the interest of those who are unable to look after themselves. The idea behind Parens Patriae is that if a citizen is in need of someone who can act as a parent who can make decisions and take some other action, sometimes the state is best qualified to take on this role. In our opinion in the case of an incompetent person who is unable to take a decision whether to withdraw life support or not, it is the Court alone, as Parens Patriae, which ultimately must take this decision, though, no doubt the views of the near relatives, next friend and doctors must be given due weight.

## **UNDER WHICH PROVISION OF LAW CAN THE COURT GRANT A APPROVAL FOR WITHDRAWING LIFE SUPPORT TO AN INCOMPETENT PERSON**

It is the **Hight Court** under **Article 226** of Constitution which can grant approval for withdrawal of life support to such an incompetent person. **Article 226(1)** of the Constitution states-

Notwithstanding anything with **Article 32**, every High court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any government within whose territories directions, orders or writs, for the enforcement of any of the rights conferred by Part III of Constitution.

## **PROCEDURE TO BE ADOPTED BY THE HIGH COURT WHEN SUCH AN APPLICATION IS FILED**

1. When such an application is filed the Chief Justice of The High Court should forthwith constitute a bench of at least two –judges who should decide to grant approval or not. Before doing so the Bench should seek the opinion of the committee of three reputed doctors to be nominated by the bench after consulting such medical authorities/ medical practitioners as it may deem fit. Preferably one of the three doctors should be a neurologist, one should be a psychiatrist, and the third a physician for this purpose a panel of doctors in every city may be prepared by the High Court in consultation with the State Government/Union Territory.

2. The committee of three doctors nominated by the Bench should carefully examine the patient and also consult the record of the patient as well as taking the views of the hospital staff and submit its report to the High Court Bench. Simultaneously with appointing the committee of doctors, the High Court Bench shall also issue notice to the state and close relatives e.g., parents, spouse, brothers/sisters etc. of the patient, and in their absence his/her next friend, supply a copy of the report of the doctor's committee to them as soon as it is available . After hearing them, the High court bench should give its verdict.
3. The above procedure should be followed all over India until Parliament makes legislation on this subject.
4. The High Court should give its decision speedily at the earliest, since delay in the, matter may result in causing great mental agony to the relatives and persons closed to the patients.
5. The High Court should give its decision assigning specific reasons in accordance with the principles of 'best interest of the patient' laid down by the House of Lords in Airedale's Case. The views of the near relatives and committee of doctors should be given due weight by the High Court before pronouncing a final verdict which shall not be summary in nature.